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John M. Oxborrow, Renee Baker, Brian Sandoval,
Joshua Miller, and Michael Fletcher*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERT C. MARTINEZ,

Plaintiff,

vs.

RENEE BAKER, in her Official and
Individual Capacity; JOSHUA MILLER,
in his Individual Capacity; JOSHUA
SASSER, in his Individual Capacity;
JOHN M. OXBORROW, in his Individual
Capacity; JACOB W. PARR, in his
Individual Capacity; MICHAEL
FLETCHER, in his Official and
Individual Capacity; HAROLD M.
BYRNE, in his Official and Individual
Capacity; JOHN DOE INVESTIGATOR,
in his Official and Individual Capacity;
JAMES "GREG" COX, in his Official and
Individual Capacity; BRIAN SANDOVAL,
in his Official Capacity; BARBARA
CEGAVSKE, in her Official and
Individual Capacity; ADAM LAXALT, in
his Official Capacity; CAMERON
HORSLEY, in his Individual Capacity;
PAMELA DEL PORTO, in her Individual
Capacity; WALTER ROMERO, in his
Individual Capacity; STATE OF
NEVADA ex rel., BOARD OF PRISON
COMMISSIONERS; STATE OF NEVADA

Case No. 2:16-cv-01546-JAD-NJK

**DEFENDANTS JAMES COX, BRIAN
SANDOVAL, BARBARA CEGAVSKE,
ADAM PAUL LAXALT, STATE OF
NEVADA ex rel. BOARD OF PRISON
COMMISSIONERS, AND STATE OF
NEVADA ex rel. NEVADA
DEPARTMENT OF CORRECTIONS'
MOTION FOR EXTENSION OF TIME
TO RESPOND TO PLAINTIFF'S
SECOND AMENDED COMPLAINT**

1 ex rel., NEVADA DEPARTMENT OF
2 CORRECTIONS; and DOES 1 through
3 10;

4 Defendants.

5 Defendants James Cox, Brian Sandoval, Barbara Cegavske, Adam Paul Laxalt,
6 State of Nevada ex rel. Board of Prison Commissioners, State of Nevada ex rel. Nevada
7 Department of Corrections, by and through counsel, Adam Paul Laxalt, Nevada Attorney
8 General, Jared M. Frost, Senior Deputy Attorney General, and Tiffany E. Breinig, Deputy
9 Attorney General, hereby move for an extension of time to respond to Plaintiff's Second
10 Amended Complaint filed June 5, 2017 (ECF No. 53). This motion is made and based on
11 the following memorandum of points and authorities, the attached Declaration of Counsel,
12 the pleadings and papers on file, and any other evidence the Court deems appropriate to
13 consider.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. Background**

16 This is inmate civil rights case filed pursuant to 42 U.S.C. section 1983. Plaintiff
17 filed his original Complaint on June 20, 2016. ECF No. 1.

18 On September 12, 2016, Plaintiff filed a first-amended Complaint. ECF No. 17.

19 On October 26, 2016, Defendants Cox, Sandoval, Cegavske, Laxalt, State of Nevada
20 ex rel. Board of Prison Commissioners, and State of Nevada ex rel. Nevada Department of
21 Corrections filed a motion to dismiss. ECF No. 27. On that same day, Defendants Baker,
22 Miller, Oxborrow, Parr, Fletcher, and Byrne filed an Answer. ECF No. 28.

23 On October 27, 2016, the Court issued a scheduling order. ECF No. 29.

24 On December 16, 2016, the Court granted the parties' request for special scheduling
25 review and issued new scheduling deadlines. ECF No. 41. Pursuant to the December 2016
26 order, all discovery must be completed by July 26, 2017, and any motions to amend the
27 pleadings must be filed by April 27, 2017. *Id.* at 2-3.

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1 On March 9, 2017, Plaintiff filed a motion for leave to file a second-amended
2 Complaint. ECF No. 45.

3 On June 1, 2017, the Court issued a minute order granting Plaintiff's motion to file
4 a second-amended complaint.

5 On June 19, 2017, Defendants Baker, Miller, Oxborrow, Parr, Fletcher, and Byrne
6 filed an Answer to Plaintiff's second-amended complaint.

7 This motion for an extension of time for Defendants Cox, Sandoval, Cegavske,
8 Laxalt, State of Nevada ex rel. Board of Prison Commissioners, and State of Nevada ex rel.
9 Nevada Department of Corrections to respond to Plaintiff's second-amended complaint
10 follows.

11 **II. Applicable Law**

12 "Unless the court orders otherwise, any required response to an amended pleading
13 must be made within the time remaining to respond to the original pleading or within 14
14 days after service of the amended pleading, whichever is later. FED R. CIV. P. 15(a)(B)(3).

15 Pursuant to Federal Rule of Civil Procedure 6(b)(1)(A), the Court may extend the
16 time to perform an act within a specified time for good cause shown.

17 **III. Argument**

18 Defendants Cox, Sandoval, Cegavske, Laxalt, State of Nevada ex rel. Board of Prison
19 Commissioners, and State of Nevada ex rel. Nevada Department of Corrections submit that
20 their request to extend the time to respond to Plaintiff's second-amended complaint is
21 supported by good cause here.

22 Defendants Cox, Sandoval, Cegavske, Laxalt, State of Nevada ex rel. Board of Prison
23 Commissioners, and State of Nevada ex rel. Nevada Department of Corrections previously
24 filed a motion to dismiss in response to Plaintiff's amended complaint. *See* ECF No. 27. In
25 their motion, Defendants argued that Counts I and II should be dismissed because *Monell*
26 claims may not be brought against states or state actors, that the entity and official-
27 capacity Defendants should be dismissed, that the supervisory Defendants should be
28 dismissed in their individual capacities for lack of personal participation, and that

1 Defendants Cox and Cegavske are entitled to qualified immunity. *Id.* However, Plaintiff
2 has now omitted any reference to *Monell* in his second-amended complaint, *see* ECF No.
3 53, and Defendants require additional time to determine what effect this may have on their
4 arguments. Furthermore, undersigned counsel has been unable to complete a response due
5 to his responsibilities to meet deadlines in other cases. *See* Exhibit 1 (Declaration of
6 Counsel). Consequently, Defendants motion for an additional thirty (30) days to respond to
7 Plaintiff's second-amended complaint should be granted.

8 DATED this 19th day of June, 2017.

9 Respectfully submitted,

10 ADAM PAUL LAXALT
11 Attorney General

12 By: /s/ Jared M. Frost
13 JARED M. FROST (Bar No. 11132)
14 Senior Deputy Attorney General
15 TIFFANY E. BREINIG (Bar No. 9984)
16 Deputy Attorney General

17 *Attorneys for Defendants*

18 Plaintiff has filed a notice of
19 non-opposition. Docket No.
20 59. For good cause shown,
21 this motion is **GRANTED**.
22 IT IS SO ORDERED.
23 Dated: June 20, 2017

24 
25 _____
26 United States Magistrate Judge
27
28